

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ADIAHA STRANGE, et al.
AISHA PHILLIPS, et al.
ADRIAN NICHOLSON, et al.
AMELIA GREEN, et al.
ASIA ARCHIE, et al.
ALEXIS CANNON, et al.,

1:19-CV-321
1:19-CV-325
1:19-CV-519
1:19-CV-670
1:19-CV-575
1:19-CV-823

Plaintiffs,

v.

SELECT MANAGEMENT
RESOURCES, LLC, et al.,

Defendants.

BRIEF IN SUPPORT OF MOTION TO ENFORCE SETTLEMENTS

Moving Plaintiffs (identified on Exhibit A to the Declaration of James Faucher being filed contemporaneously herewith), by and through the undersigned counsel, hereby submit this brief in support of their Motion to Enforce Settlements in accordance with LR 7.2

**STATEMENT OF THE NATURE OF
THE MATTER BEFORE THE COURT**

This matter is before the Court on Moving Plaintiffs' Motion to Enforce Settlements. Plaintiffs are all North Carolina residents. Plaintiffs each

entered into one or more car title loans with Defendants. Plaintiffs' Complaints asserted claims, *inter alia*, under the North Carolina Consumer Finance Act and for Unfair and Deceptive Trade Practices arising from Defendants' car title loan businesses. Moving Plaintiffs each entered into a settlement with Defendants. Defendants have failed to pay the settlements when due and for certain of the Moving Plaintiffs (as indicated on Exhibit A to the Declaration of James Faucher) have failed to return unencumbered vehicle titles and failed to arrange for the return of vehicles.

STATEMENT OF FACTS

Defendants have admitted that they entered into settlement agreements with Moving Plaintiffs. (DN 68, p 1). Defendants have admitted that all of the settlement payments were due on December 10, 2019 and that there is provision in each settlement that include a \$15 per day liquidated damages provision after December 17, 2019. (DN 68, p 2) Kenneth Wayco, President of each Defendants, has stated that "Defendants intend to continue making all agreed-upon payments, including the required liquidated damages." (DN 69, p 1) Defendants have not done so. (Declaration of James Faucher, 4) A list of the Moving Plaintiffs who have not been paid the agreed upon settlements is attached to the Declaration of James Faucher as Exhibit A. The amount owed to each Moving Plaintiff through February 12, 2020 is

set forth on Exhibit A. The date the settlement payments were to be made was critical to Moving Plaintiffs' acceptance of the offers as is evidenced by the parties' agreement that time was of the essence and and by the liquidated damages provision. Moving Plaintiffs relied on Defendants' agreement that they would receive the settlement payments prior to the recent holiday season. Moving Plaintiffs now find themselves in significant financial hardship as a result of Defendants' actions. (Faucher Dec. 7)

QUESTION PRESENTED

1. Should the Court enforce the settlement between Defendants and each Moving Plaintiff by Court order?

ARGUMENT

The Court has the authority to enforce the settlements:

"[D]istrict courts have inherent authority, deriving from their equity power, to enforce settlement agreements." *Hensley v. Alcon Labs., Inc.*, 277 F.3d 535, 540 (4th Cir. 2002). Before the district court enforces a settlement agreement, it must make two inquiries. *See Moore v. Beaufort Cty.*, 936 F.2d 159, 162(4th Cir. 1991). First, the court must determine whether the parties in fact agreed to settle the action. *See id.* Second, the court must discern the terms of the settlement. *See id.* If the parties agreed to settle the action and the terms are clear, a district court may enforce the settlement agreement. *See id.*; *Hensley*, 277 F.3d at 540; *Millner v. Norfolk & W. Ry.*, 643 F.2d 1005, 1009 (4th Cir. 1981).

Poursaied v. Summermill at Falls River-Banner Apartment Bldgs. 5:17-cv-115-D (E.D. N.C. 2018)

First, it is undisputed that the Moving Plaintiffs and Defendants

agreed to settle the action. Defendants have admitted that the settlements were made. Second, the terms of the Settlement are also clear. The Court has before it an exemplar of the Settlement Agreement the parties agreed to execute. (Faucher Declaration, Exhibit B) Second, the Court has before it the amount of the settlement payment due to each Moving Plaintiff as of February 14, 2020.

CONCLUSION

For the reasons set forth herein, Moving Plaintiffs respectfully pray to the Court for an Order granting Moving Plaintiffs' motions to enforce the settlements. By separate Motion to File Supplemental Complaint, Moving Plaintiffs will ask the Court for permission to file a Supplemental Complaint to assert claims under N.C. Gen. Stat. § 75-1.1 *et seq.* to treble the amount of the damages awarded to each Moving Plaintiff and for an award of attorneys fees.

Respectfully submitted, this the 14th day of February, 2020.

/s/James R. Faucher
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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing document complies with the word count limits contained in LR 7.3(d)(1).

This the 14th day of February, 2020.

/s/James R. Faucher

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CERTIFICATE OF SERVICE

The undersigned counsel of record for Plaintiffs certifies that the foregoing was filed with the Court and served on the parties via filing with the Court's CM/ECF system which will send notice of the filing to all counsel of record.

Respectfully submitted, this the 14th day of February, 2020.

/s/James R. Faucher

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